



MICHIGAN HEALTH & HOSPITAL ASSOCIATION

MHA UNEMPLOYMENT COMPENSATION PROGRAM

To: Members of the Michigan House of Representatives Committee on Commerce

From: Neil Mac Vicar, Vice President
MHA Unemployment Compensation Program
Michigan Health & Hospital Association
(517) 886-8331 or nmacvicar@mha.org

Date: March 12, 2013

Re: **House Bill 4240 — Proposed Amendments**
Committee Hearing: March 13, 2013 at 10:30 am

I am writing on behalf of the 300+ clients represented by the Michigan Health & Hospital Association's Unemployment Compensation Program. Those clients are hospitals, health systems, nursing care facilities, and other health care employers throughout Michigan. A list of the health care employers we represent is attached for your review.

As you are aware, the House Commerce Committee is currently considering House Bill 4240 which amends the Michigan Employment Security Act [MES Act]. In this correspondence, I would like to recommend a few changes/amendments to HB 4240. In addition, I would like to recommend other amendments to the MES Act that are related to the bill under consideration.

In the following paragraphs, I will set forth [by the numerical order in the statute] recommendations for amending the current HB 4240, and provide rationale for each recommendation:

I. Failed Drug Test or Refusal to Submit to a Drug Test — Section 28:

- **Recommended Change / Section 28(1)(c)(iv):**

The reference to "employment application" should be changed to:

"Unless the individual shows good cause, the individual fails or refuses to submit to a drug test that is required as part of the employment hiring process, which includes the application process and any hiring processes required and initiated after a conditional offer of employment is made to an individual. Unavailability under this subparagraph extends for 20 weeks after the date the failed drug test was administered or the drug test was refused. "

Continued . . .

- **Recommended Deletion / Section 28(1)(c)(iv):**

Delete the concept of “encouraging” employers to report a failed drug test or a refusal to submit to a drug test as part of the employment hiring process as it is simply not enforceable; and therefore, should not be included in the statute.

Additional rationale for deletion: A prospective employer typically does not know and does not inquire as to whether a prospective employee has an active unemployment claim established. The reporting of a failed drug test or the refusal to submit to a drug test to the UIA for a person who does not have an established and/or active unemployment claim may be deemed a breach of confidentiality/privacy, and may be a violation of constitutional rights.

- **Recommended Addition / Sections 28(1)(b), 28(1)(c)(iv), 28(7)(A) and (B):**

The term “drug test” in HB 4240 should be specifically defined. Recommended language:

“Drug test” means a test designed to detect the use of illegal substances as defined by state or federal law, or the illegal use of controlled substances.

- **Recommended Change / Section 28(7)(B):**

Regarding the claimant’s “authorization” for the UIA to receive drug test results, this could lead to inappropriate searches by UIA. The required authorization should be limited to only those situations where there is disclosure by the claimant or an employer that employment was denied due to a positive drug test.

Amended 28(7)(B):

If a claimant indicates that he or she failed or refused a drug test pursuant to Section 28(7)(A), then the claimant shall disclose the name and address of the employer that required the drug test and authorize the Agency to receive the results of any drug test that an employer required of the claimant

- **Recommended Addition / Section 28:**

Add a provision within Section 28 to deter fraud concerning all “eligibility” issues set forth in Section 28 of the MES Act:

A claimant who falsifies answers, or provides misleading answers or information, to inquiries under Section 28 will be subject to the fraud penalties assessed under Sections 54 and 62 of the MES Act.

II. Additional Amendment / Training Waiver — Section 28(3):

Delete “Notwithstanding” Language / Section 28(3):

In recent decisions concerning “training waivers”, the Michigan Compensation Appellate Commission [MCAC] alludes to that specific language as being a prohibition on employers to contest a training waiver granted by the UIA. The MCAC’s position is adverse to the employer community. By deleting the “notwithstanding” language, employers would be able to contest inappropriate training waivers issued by the UIA.

Delete the language that refers to “notwithstanding” — ~~“Notwithstanding any other provision of this act,”~~.

III. Amend “Drug Test” Definition — Section 29(1)(m)(ii):

In light of the recent decision from the Ingham County Circuit Court involving an unemployment claim and a discharge involving medical marijuana — Kemp v Hayes Green Beach Memorial Hospital, it is recommended that the definition of “drug test” under Section 29(1)(m)(ii) be amended. This will also ensure consistency within the MES Act regarding reference to drug tests. Recommended amendment:

“Drug test” means a test designed to detect the use of illegal substances as defined by state or federal law, or the illegal use of controlled substances.

IV. Amend Unemployment Fraud Penalty — Section 62(b):

Claimants who commit unemployment fraud should have their claims cancelled from the date the fraud commenced. Currently, the cancellation can only occur as of the date the Agency receives notice of, or initiates, an investigation of the fraud. This allows claimants who engage in fraud to retain partial benefits during the time they were actively engaged unemployment fraud.

Section 62(b) should be amended:

“ . . . the person shall, in addition to any other applicable penalties, have his or her rights to benefits for the benefit year in which the act occurred cancelled as of the date the ~~commission receives notice of, or initiates investigation of, a possible~~ **THE** false statement, misrepresentation, or concealment of material information, ~~whichever date is earlier~~ **FIRST OCCURRED**, and wages used to establish that benefit year shall not be used to establish another benefit year.”